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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/019,163

12/20/2001

Sanjay Lakhotia

AM100039

1674

25291

7590

09/18/2006

EXAMINER

FORD, VANESSA L

WYETH

PATENT LAW GROUP

5 GIRALDA FARMS

MADISON, NJ 07940

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/019,163	LAKHOTIA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vanessa L. Ford	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/25/03</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. The RCE was filed on July 6, 2006. Applicant's submission filed on April 10, 2006 has been entered. Claims 2-3, 5-6, 9, 10 and 14-15 have been amended.

### ***Rejections Withdrawn***

2. In view Applicant's amendment and response the following rejections have been withdrawn:

- a) rejection of claims 1-16 under 35 U.S.C. 103(a), pages 3-5, paragraph 4.
- b) rejection of claims 1-16 under 35 U.S.C. 103(a), pages 5-7, paragraph 5.

### ***New Grounds of Rejection***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 5, 9 and 14 are rejected under 35 USC 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2, 5, 9 and 14 recites " zwitterionic detergent ...". It is unclear as to what is referring? Clarification and/or correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-16 are rejected under 35 U.S.C. 103(a) as unpatentable over Green et al (*U.S. Patent No. 5,780, 601, published July 14, 1998*) in view of Nicholson (*U.S. Patent No. 5,681, 936 published October 28, 1997*).

The are drawn to a process for extracting native or recombinantly-expressed, gram-negative inner and outer membrane proteins from bacteria or bacterial host cells containing a recombinant vector by differential detergent tangential flow diafiltration.

Green et al teach a method of purifying bacteria using detergents such as Triton™ (column 4). Green et al teach that in a preferred embodiment the outer membrane components are prepared by differential solubilization of the inner membranes and outer membranes using Triton™ in HEPES-NaOH and MgCl<sub>2</sub> (Abstract and column 14). Green et al teach that a subfraction of the preparation of the outer membrane components which is rich in protein "e" (outer membrane protein P4 from *Haemphilus influenzae*) can be produced by extraction with an aqueous solution (column 4). Green et al teach that the protein "e" from the outer membrane cell wall complex can be then achieved by a two-step differential solubilization with sulfobetaine

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detergents (column 4). Green et al teach that the first step comprises an aqueous solution of Zwittergent™ to remove other outer membrane proteins other than protein “e” (column 4). Green et al teach that the residual insoluble components are then extracted with an aqueous solution of Zwittergent™ and this fraction results in the solubilization of protein “e”(column 4). Green et al teach that this process is performed in a homogenizer (column 14) since the instant specification teaches that a homogenizer is a microfluidizer (page 10 of the specification). Green et al teach that recombinant protein “e” can be isolated and purified by differential solubility (column 9).

Green et al do not teach tangential flow filtration (TFF).

Nicholson teaches a method of extracting recombinant proteins using tangential flow filtration (TFF) (column 10). Nicholson et al teaches that using their method is advantages because the proteins purified by the method have a high yield and was entirely homodimeric (see the Abstract).

It would be *prima facie* obvious at the time the invention was made to use tangential flow filtration as taught by Nicholson to extract bacterial proteins (inner and outer membrane) because Nicholson teaches that using TFF has the benefit of high yields and entirely homodimeric. It would be expected barring evidence to the contrary that using tangential flow filtration in a method of extracting proteins would offer high quality and high yield proteins.

***Pertinent Prior Art***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure Datar, (*Biotechnology Letters*, Vol. 7, No. 7, p. 471-476, 1985).

***Status of Claims***

6. No claims allowed.

**Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanessa L. Ford whose telephone number is (571) 272-0857. The examiner can normally be reached on 9 am- 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Albert Navarro can be reached on (571) 272-0861. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Vanessa L. Ford  
Biotechnology Patent Examiner  
September 10, 2006



ROBERT A. ZEMAN  
PRIMARY EXAMINER